



Hendricks v. Coughlin, 114 F.3d 390, 393 (2d Cir. 1997); Cooper v. A. Sargenti Co., 877 F. 2d 170, 172 (2d Cir. 1989). Instead, the district court must first require an indigent to “pass the test of likely merit.” Cooper, 877 F.2d at 173-74. See also Machadio v. Apfel, 276 F.3d 103, 107-08 (2d Cir. 2002). “[E]ven where the claim is not frivolous, counsel is often unwarranted where the indigent’s chances of success are extremely slim.” Cooper, 877 F.2d at 171; see also Carmona v. United States Bureau of Prisons, 234 F.3d 629, 632 (2d Cir. 2001). When deciding whether to appoint counsel, the district court must thus “determine whether the indigent’s position seems likely to be of substance.” Hodge, 802 F.2d at 61. Only after assessing the merits of the case, should the court consider the litigant’s “competence to proceed pro se, the complexity of the issues,” and any other reason why the appointment of counsel would be more likely to lead to a just outcome. Machadio, 276 F.3d at 108; Carmona, 234 F.3d at 632.

This case is in the first stages of litigation, with no record yet developed except the plaintiff’s complaint. While the court makes no decision on the ultimate merits of this action, it concludes that the appointment of counsel is not warranted at this time. Should further development of the record indicate that Whitaker’s claim likely has merit, the court will then consider a renewed motion for appointment of counsel. See Machadio, 276 F.3d at 108 (“district courts should continually assess whether counsel should be appointed”).

The Motion for Appointment of Counsel [Dkt. No.4] is DENIED without prejudice

to renew at a subsequent stage of litigation. Any renewal of this motion shall include a summary of plaintiff's additional attempts to obtain legal representation including the names of attorneys that he has contacted, the dates of contact and the reasons why assistance was not provided.

**SO ORDERED.**

Dated this 4th day of December, 2003, at Bridgeport, Connecticut.

/s/ Janet C. Hall  
Janet C. Hall  
United States District Judge